Supreme Court, U.S.
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No. 00-1221

In The

Supreme Court of the United States

LUC MARTINI,

Petitioner,

v.

THE BOEING COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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I. INTRODUCTION

An examination of respondent's vituperative allegations and arguments reveals that no relevant facts are in dispute in this summary judgment appeal (nor have they been misrepresented by petitioner), and that reliance on *Cleveland* here is misplaced. *Cleveland* permits an employer to assume that a previously *qualified* current employee is *not qualified* to work based solely on recent, prior representations of disability. That analysis, when applied here, wrongly permits a potential employer to assume that a job applicant who is already a recipient of disability and seeking to leave the disability rolls, is *not qualified* owing to his receipt of disability benefits, without reference to his real ability to perform the essential functions of available jobs at the time of application.

II. REPLY TO RESPONDENT'S STATEMENT OF THE CASE

A. Boeing's Focus On Mr. Martini's Representations Made Prior To His Application For Employment At Boeing Misstates The Record

Boeing's statement of the case seems to have two objectives: (1) to misstate the record as to Mr. Martini's representations of total disability in the 1991 time frame (Response at pp. 2-4), and (2) to berate Mr. Martini for having received disability benefits in the form of money and a 1999 damage award payment for Boeing's prior discrimination during the period between his application for Social Security Disability Insurance ("SSDI") benefits in 1990 and his application for Boeing employment in 1996 (Response at pp. 3-4, 6 n. 3).

Without attaching an appendix, Boeing cites to portions of the record in a manner that fails to accurately represent the meeting. For example, citing SER 192-99,[1]

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[1] Boeing's repeated citation to SER 192-99 is for the most part erroneous. SER 192-94 are pages 18-20 of Boeing's motion

Boeing lists one of four instances contained in a paragraph on a form in which Mr. Martini agreed to notify social security if his medical condition improved to the point he could work. Response at 2. Boeing's citation is designed to lead the Court to conclude that Mr. Martini did something wrong by applying for Boeing employment in 1996, presumably without first formally notifying the Social Security Administration ("SSA") of his application. There is no such requirement for those who are seeking a trial work period to test whether they can work. This is evident by the omitted section of the computer-generated form, which includes his agreement to notify the SSA if he goes "to work whether as an employee or a self-employed person." Reply App., *infra*, 74a. Mr. Martini's situation fell between being obviously able to work (without reference to accommodation) and actually working. Mr. Martini was seeking to test whether he could work under a trial work period so he could leave the SSDI rolls. Mr. Martini did nothing wrong procedurally in applying for Boeing employment in 1996, and because he was testing his ability to work, there is no conflict between receiving SSDI benefits and seeking employment.[2] Boeing's statement of the case has the

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for partial summary judgment dated November 23, 1994, filed in an earlier state court proceeding; SER 195-96 is the order pertaining to that motion; SER 197-99 is the relevant computer generated application form for social security disability benefits. SER 199 has been reproduced at Reply App., *infra*, 74a.

[2] Boeing harps on the 1991 time frame to contradict references in the Petition to Mr. Martini's qualifying statements of his disability. Response at 2-4. However, the Ninth Circuit acknowledged (but discounted) Mr. Martini's statements that he could work with accommodation, so Boeing's efforts are unavailing. Pet. App. at 2a. For the Court's convenience, excerpts of some of those representations are included in Appendices R and S at Reply App., *infra*, 76a-78a. Additionally, attached as Appendix U, Reply App., *infra*, 86a-88a, is a 1994 letter from Dr. Robert Miller, his treating psychologist, to

opposite effect from that which Boeing intended, because it focuses the Court on the real issue: whether the ADA protects disabled persons from discrimination who seek to return to the workforce under a trial work period.

Though obviously not relevant to the issues of this case, Boeing goes to great lengths to list the monthly payments received by Mr. Martini from social security in amounts ranging from $1052 per month to $1208 per month and long-term disability in the amount of $1,229 per month. Response at 3-4. Boeing also references a 1996 front pay damage award received by Mr. Martini in 1999 after an exhaustive appeal by Boeing of another meritorious disability discrimination claim that resulted in a jury verdict against Boeing in the amount of $776,288.[3] Although these figures are irrelevant to this case, Boeing's reference to the money is a vague complaint that Mr. Martini has obtained enough from Boeing, and that he continues to obtain money from the SSA and from Boeing's long-term disability insurance, so he should not be permitted to obtain more in this lawsuit.

Boeing's attack only highlights the drain on public resources that result from an employer's refusal to consider for employment disabled applicants who seek to be removed from the SSDI rolls under a trial work period. Had Boeing acted properly under the law, the result may have been that all of that money paid out since 1996

Boeing's long-term disability administrator, advocating Mr. Martini's return to gainful employment with Boeing.

[3] Boeing's assertions of fact at R6 n.3 cannot be found in its case citations or elsewhere in the record. The total amount of the jury award prior to the appeal (not including attorney fees and interest calculated through the date of payment in 1999) was $776,288. For a complete statement of the facts leading to the verdict *see Martini v. Boeing*, 88 Wash. App. 442, 449, 945 P.2d 248, 252 (1997). The Court should also note that under the ruling, any award resulting from the workers' compensation claim from the shoulder injury, which is described in this case, would have been subrogated. *Id.* at 468-9.

would have been retained by the SSA and by Boeing as a self-insured under its long-term disability plan. It also highlights the cost to corporate shareholders of discriminatory behavior by corporate managers, and the need to avoid repeated discriminatory treatment of disabled former employees and job applicants.

B. Contrary To Boeing's Mischaracterization Of Mr. Martini's 1996 Job Application As Only "Expressing An Interest In A Job," The Application Shows That Mr. Martini Was Qualified For The Available Positions

In the petition, Mr. Martini asserted that the best evidence of his intent to return to work was his job application to Boeing. Petition at 15. In its response, Boeing seeks to diminish the importance of that evidence arguing that "Martini's employment application reflects no more than his professed interest in a particular position." Response at 13. Mr. Martini's application reflects much more. In his application, which contains a cover letter and resume, he outlines his extensive qualifications for four open positions at Boeing. Reply App., *infra*, 79a-85a. Accordingly, that application put Boeing on notice that he was extremely well qualified for the available positions. Yet Boeing failed to consider him for employment simply because he was receiving SSDI payments.

C. Boeing's Attack On Mr. Martini's Assertion That Boeing Rejected Him Out Of Hand Because He Was Receiving Disability Benefits Is Unjustified Since Mr. Martini's Assertion Is Supported By The Evidence

Boeing accuses Mr. Martini of "misstating the issue and misrepresenting the facts" pertaining to Boeing's having rejected him out of hand because he was on

disability. Response at 15. Boeing claims that the record is devoid of such evidence and notes that the magistrate judge never reached that issue. The latter assertion is accurate. The magistrate judge never reached the issue of Boeing's responsibility to consider Mr. Martini for employment, because the issue for summary judgment was so narrowly drawn. At Boeing's request, the exclusive issue for summary judgment was "the existence and extent of plaintiff's disability at the time of, and after, his 1996 employment application at Boeing, including plaintiff's representations and any determinations as to that disability." Pet. App. at 10a-11a.

Owing to the limited scope of the summary judgment motion, again at Boeing's request, the magistrate judge prohibited Mr. Martini from conducting any discovery except for discovery focusing on the above-mentioned issue as defined by Boeing and the court. Pet. App. at 11a, 8a-9a, 7a. However, the court's decision to proceed forward only on the issue of Mr. Martini's disability and representations at the time of his 1996 employment application to Boeing and his medical status thereafter, does not lead to the conclusion that the record is devoid of evidence that Boeing rejected Mr. Martini out of hand owing to his disability. Upon remand, this issue will be further fleshed out, but there is already evidence in the record in the form of Boeing's letter to the EEOC wherein Boeing claimed it had "no legal obligation to consider Martini's application for employment." Pet. App. at 65a. Boeing also listed three reasons for denying the EEOC claim:

> (1) Because Mr. Martini collects social security disability benefits;
>
> (2) Because if Mr. Martini is not totally disabled, then he has "misrepresented facts to government agencies and an insurance company;" and
>
> (3) Because he "has not suffered unlawful discrimination" and cannot prove he is qualified for the positions.

Pet. App. at 64a. Boeing never asserted that Mr. Martini was unqualified for the jobs in a technical sense; Boeing only went so far as to say Mr. Martini could not prove he was qualified. Of course, for the purposes of this summary judgment appeal, the proof of his qualifications is contained in his resume and letter of application. Pet. App. at 79a-85a.

D. Boeing Misrepresents The Magistrate Judge's Holding

Boeing attempts to expand the narrow holding of the magistrate judge by claiming that "Judge Weinberg agreed with Boeing that Martini's medical evidence raised no genuine issue of material fact with respect to his inability to perform the essential functions of the job, with or without accommodation." Response at 7. Actually, the scope of the summary judgment motion and the magistrate judge's ruling was limited to his holding that "there is no genuine issue of fact as to whether plaintiff was totally disabled when he applied to Boeing for employment in February of 1996." Pet. App. at 24a. Thus, though Boeing argues that "all discrimination plaintiffs . . . must prove that they were qualified for the position in question to survive summary judgment," such a standard should only be applied after full discovery on issues broader than whether they were totally disabled in the context of having received social security disability benefits. *See* Response at 10.

III. REPLY TO RESPONDENT'S REASONS FOR DENYING THE PETITION

A. Contrary To Boeing's Assertions, *Cleveland* Only Addresses The Trial Work Period As An Example Of The Interaction Between The Two Acts; It Does Not Offer Any Guidance Here

Under the heading, "The Court in *Cleveland* Directly Considered the Trial Work Period Regulations and Underlying Policy in Reaching Its Holding," Boeing resorts to a vitriolic attack on the petitioner accusing him of a "blatant misrepresentation of precedent." Response at 10. Again, Boeing relies on a weak argument that "[t]he existence of and the policy underlying the trial work period regulations were factors in the Court's decision not to impose a per se bar or a presumption against ADA plaintiffs who had applied for disability benefits." *Id.*

The Court in *Cleveland v. Policy Management*, 526 U.S. 795 (1999) did not directly consider the interaction between the trial work period and the ADA in its holding.[4] The petitioner in *Cleveland* was employed and seeking accommodation while simultaneously representing to the SSA that she met their criteria for being totally disabled. *Cleveland v. Policy Management* at 798-9. The petitioner in *Cleveland* could not seek a trial work period because the trial work period is only available to persons like Mr. Martini who are receiving social security disability benefits and attempting to return to the work force.

In *Cleveland*, the trial work period is not analyzed in connection with the holding, but is only cited with approval as background to show the differences between the Social Security Act and the ADA:

> Further, the SSA sometimes grants SSDI benefits to individuals who not only can work, but are

---

[4] Boeing also erroneously claims that the court in *Johnson v. State of Oregon*, 141 F.3d 1361 (9th Cir. 1998) rendered a holding referencing trial work period regulations. Response at 17. Nowhere in the opinion can such a holding be found.

> working. For example, to facilitate a disabled person's reentry into the workforce, the SSA authorizes a 9-month trial-work period during which SSDI recipients may receive full benefits. *See* 42 U.S.C. § 422(c), 423(e)(1); 20 CFR § 404.1592 (1998). *See also* § 404.1592a (benefits available for an additional 15-month period depending upon earnings). Improvement in a totally disabled person's physical condition, while permitting that person to work, will not necessarily or immediately lead the SSA to terminate SSDI benefits. And the nature of an individual's disability may change over time, so that a statement about that disability at the time of an individual's application for SSDI benefits may not reflect an individual's capacities at the time of the relevant employment decision.

Cleveland v. Policy Management at 805. This case presents the Court with the opportunity to determine whether employers such as Boeing are circumventing the intent of Congress by misconstruing *Cleveland*, which does not address the relationship between the related purposes of the ADA and the SSA to return disabled persons to work in a trial work period setting.

B. Boeing's Efforts To Argue That Mr. Martini Has Failed To Present A Prima Facie Case Ignores The Magistrate's Discovery Orders

Boeing consistently confuses the difference between testing one's ability to work while receiving social security disability benefits in the context of the trial work period with being qualified to work within the meaning of the ADA. Response at 12-13. The ADA protects from discrimination a "qualified individual with a disability – that is, a person who, with or without reasonable accommodation, can perform the essential functions of the job." *Cleveland v. Policy Management* at 806, *quoting*, 42 U.S.C. § 12111(8) (internal quotation marks omitted). Mr. Martini's resume and cover letter outline his qualifications

and his ability to perform the essential functions of each job consistent with qualifications delineated in the advertisements. However, a more detailed analysis will have to await the commencement of discovery, since the magistrate judge prohibited all discovery that may have provided an in-depth analysis. Pet. App. at 11a, 8a-9a, 7a. It would be grossly unfair to demand a more detailed analysis of Mr. Martini's ability to perform the essential functions of each job at this stage of the proceeding given the complete bar to discovery outside the scope of Mr. Martini's medical condition and representations made during and after his application for employment in 1996, especially, since that discovery bar came at Boeing's request. *See* Pet. App. at 7a. Moreover, at the time of the application, rather than summarily dismissing Mr. Martini from consideration owing to his status as a recipient of social security disability benefits, Boeing could have "made preemployment inquiries into [his] ability to perform job-related functions." 42 U.S.C. § 12112(d)(2)(B). Owing to Boeing's failure to engage in a preemployment inquiry, Boeing lost any chance to refute Dr. Miller's opinion that Mr. Martini "would reasonably have been able to overcome his illness sufficiently to return to gainful employment." Pet. App. 60a. This Court should grant the petition to decide whether Boeing violated the ADA by its dismissal of his application without consideration.

C. Certification To The Washington State Supreme Court Is Appropriate

The Washington State Supreme Court has never addressed the issue of whether an employer's failure to consider an applicant for employment because the applicant is receiving social security disability benefits and seeking a trial work period is a violation of the Washington Law Against Discrimination. Boeing's own words betray the weakness in its opposition to state certification. Boeing argues that "this case turns on whether summary judgment against Martini was appropriate

given the absence of any issue of material fact on whether he was 'qualified' to work." Response at 20. Actually, the magistrate defined the scope of review as "whether plaintiff was totally disabled when he applied to Boeing for employment in February of 1996." Pet. App. at 24a. This issue has never been addressed by the Washington Supreme Court. Regardless of the outcome in this Court under the ADA, the Washington State Supreme Court's departure from federal precedent strongly supports certification. *See Pulcino v. Federal Express*, 141 Wash. 2d 629, 9 P.3d 787 (2000) (Washington law provides protection for temporary disabilities contrary to ADA); *Martini v. Boeing*, 137 Wash. 2d 357, 364, 971 P.2d 45, 49 (1999) (Washington law provides greater remedies than Title VII and ADA); *Dean v. Municipality of Metropolitan Seattle-Metro*, 104 Wash. 2d 627, 708 P.2d 393 (1985) (rejects *McDonnell Douglas*[5] elements for a prima facie case of employment discrimination in disability discrimination cases).

IV. CONCLUSION

For the reasons set forth above and outlined in the petition, the petition should be granted.

Respectfully submitted,

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[5] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

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APPENDIX Q

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION IF:

___ MY MEDICAL CONDITION IMPROVES SO THAT I WOULD BE ABLE TO WORK, EVEN THOUGH I HAVE NOT YET RETURNED TO WORK.

___ I GO TO WORK WHETHER AS AN EMPLOYEE OR A SELF-EMPLOYED PERSON.

___ I APPLY FOR OR RECEIVE A DECISION ON BENEFITS UNDER ANY WORKERS' COMPENSATION LAW OR PLAN (INCLUDING BLACK LUNG BENEFITS FROM THE DEPARTMENT OF LABOR), OR OTHER PUBLIC BENEFIT BASED ON DISABILITY.

___ I AM IMPRISONED FOR CONVICTION OF A FELONY.

THE ABOVE EVENTS MAY AFFECT MY ELIGIBILITY TO DISABILITY BENEFITS AS PROVIDED IN THE SOCIAL SECURITY ACT, AS AMENDED.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION IF I BECOME ENTITLED TO A PENSION OR ANNUITY BASED ON EMPLOYMENT AFTER 1956 NOT COVERED BY SOCIAL SECURITY, OR IF SUCH PENSION OR ANNUITY STOPS.

MY REPORTING RESPONSIBILITIES HAVE BEEN EXPLAINED TO ME.

I KNOW THAT ANYONE WHO MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF MATERIAL FACT IN AN APPLICATION OR FOR USE IN DETERMINING A RIGHT TO PAYMENT UNDER

THE SOCIAL SECURITY ACT COMMITS A CRIME PUNISHABLE UNDER FEDERAL LAW BY FINE, IMPRISONMENT OR BOTH. I AFFIRM THAT ALL INFORMATION I HAVE GIVEN IN CONNECTION WITH THIS CLAIM IS TRUE.

MY MAILING ADDRESS IS 1415 293 AVE NE
CARNATION WA 98014

MY TELEPHONE NUMBER IS (AREA CODE) 206-333-6568.

SIGNATURE /s/ Luc Martini DATE 12/12/90

SER 199

APPENDIX R

(Excerpt from 1991 letter from Martini to SSA seeking reconsideration of denial of social security disability benefits)

> My former employer (Boeing Aerospace – Military Programs) would not grant the flexibility in schedule required to manage my medical needs. They ignored prescribed medical advice, and applied such pressures and harassment as [to] place my health and well-being in severe and immediate jeopardy, on numerous occasions, although I had made innumerable unsuccessful attempts to address the issues pertinent to my health management in the work [place].
>
> I have been attempting to find employment which would allow me to manage my medical needs. This can best be accomplished by a "work-at-home" approach. I have in over 8 months of diligent attempts, not been able to find an employer whom will even consider hiring me and managing my needs in the workplace, much less allow me to work at home.
>
> In Short, I am not yet dead, in body or mind; I am mobile, though limited; I can function in the work place, though limited; I am eager to put my mind and talents to work, limited only by being not willing to compromise my medical management; etc.
>
> The problem is that the work place does not want someone whom is "limited." If ones' physical and/or psychological condition limits ones performance such that one cannot obtain gainful employment (and without jeopardizing health

and well-being, then one certainly should be considered disabled.

ER 96

APPENDIX S

(Excerpts from 12/12/90 Disability Report, Form OMB No. 0960-0141 (entries handwritten by Luc Martini)

PART VI – REMARKS

Use this section for additional space to answer any previous questions.

. . . .

I personally feel capable of making a contribution in the work environment. However, my former employer (the Boeing Co.) [illegible] and since I have not been above to find alternate employment, [sic.] do not with to make allowances for my limitations. These limitations require a flexible work schedule, determined by the quality of my sleep on any given day, short commute, or work at home . . . access to an area where I can rest and work . . . sensitivity . . . consideration of limitations on travel assignments.

SER 214

APPENDIX T

02/28/1996

FROM: Luc J.R. Martini
1415 293rd Ave. NE
Carnation WA 98014
Ph: (206) 333-6568
Fax: (same)

TO: Boeing Defense & Space Group
P.O. Box 3707, M/S 80-CA,
Seattle, WA 98124-2207

SUBJECT: Consideration in Employment

RE: Solicitation in "Aviation Weekly", 29 Jan. 1996.

Please consider the attached Resume for current and projected manpower needs. I wish to be considered for current placement under the provision noted on your "Skills Line"; namely, former employees who terminated within the last five (5) year.

My background is applicable to at least the following solicited positions.

- Manager, NATO Retrofit (Ref. 7-EYA-JP-DSG-F64815)
- Research/Program Support – Radar/Signal Processing/ Sensor Fusion.
- AWACS Instructional Systems/Support (Ref. IDAWJ6)
- F-22 Instructional Systems/Support (Ref. CDAWJ6)

Three of the above positions relate to the AWACS program, where my broad range of expertise in Sensor

Technologies, including Radar, IFF, ESM, ECM, and Electro-Optics is nearly unequaled. Additionally, I have possess strong Airvehicle skills, (including Powerplant) and worked for numerous years in I&CO/Test Engineering.

In addition to my technical qualification, I also have strong and proven Communications, leadership and Management skills. Additionally, I have an excellent, long standing rapport with the USAF AWACS Chief Engineer, at the Hanscom AFB, MA. procurement center.

My qualifications for the management position in Germany, include prior responsibilities of similar nature while employed with Westinghouse Electric Corp. (Team Leader, International Warranty Modifications Program), as well as Functional Management Experience with Boeing (in addition to being selected for several (3) management positions, including a subcontract management slot, which did not come to fruition). I also am multilingual and comfortable in the various European cultures.

My background in the Instructional Systems/Support (CBT) area is without equal. I personally developed the only existing AWACS Radar Computer Based Training (CBT) data base in existence; namely the ARMTS Program. I also developed a substantial multimedia AWACS training Instructional segments, as well as Data Base and Multimedia Presentations in the "Commercialization of Space" program, for presentation to the highest levels of Management within NASA, and the Fortune 100 CEO's.

/s/ Luc J.R. Martini
Luc J.R. Martini

Luc Jean Roger Martini
1415 293d Ave. NE
Carnation W.A., 98014
Ph.: (206) 333-6568/393-0814

OBJECTIVE

A Managerial or supervisory position utilizing my technical strengths, past occupational experience and unique linguistic ability.

PROFILE

A Generalist, whose technical forte is innovative endeavors, possessing a natural facility with interdisciplinary integrations encompassing the fields of electronics (digital and analog), civil, mechanical and biomedical engineering: A multifaceted international social background and education, coupled with considerable public relations experience.

EDUCATION

CIT: AA, Electronics Technology, 1971
BS. Electronic Engineering, 1973
Major: Communications
Minor: Digital Technology

U. of M.D.: Linguistics, No degree

Foreign Educational Experience
Seminario Vescoville di Treviso, Italy
Collegio Pio Decimo, Italy
Staats Shool, Belgium

EMPLOYMENT HISTORY

– Boeing On-Site Manager, ITT Defense Electronics, Nutley N.J. Direct Subcontractor interface reporting the Project Management of Saudi Air Defense System Program (Peace Shield). Responsible for subcontractor performance in the development and acquisition of multifunction Digital and Voice encryption system.

– Assistant to the Director, NASA Commercialization of Space program. Direct interface with Top levels management (multiple codes) at NASA HQ. Responsible for development and implementation of orientation program for Directors and Key personnel NASA Industrial Applications Centers. Instrumental in the development of Briefings Tree for presentation to CEO's and key personnel of the Fortune 100 corps. Key member of capabilities assessment team for all NASA facilities and programs for Commercialization potential; Space / Flight Centers, Centers of Excellence, Research Centers.

– Functional Project Manager. Advanced Radar Maintenance Training Set (ARMTS). Total program responsibility from conceptual design to contract completion with USAF ESD.: Concept marketing, proposal prep, proof of concept, time lines and pricing inputs to Contracts and Finance: negotiated in-house and market support requirements: assisted in contractual negotiations:

implemented the contract: managed budget, personnel, materials resources: wrote technical and administrative reports and correspondence: directly interface with USAF, ESD, ATC and Commercial Contractors and technical personnel: negotiated/resolved claims/disputes.

– Contract Proposal Development Team Member: Contractor Maintenance Support (CMS) package. Responsible for specifying airborne digital radar system CMS personnel requirements, training, qualification and certification requirements, training equipment specifications and personnel and equipment scheduling.

– Systems Development Proposal Team Member: Space Defense Initiative (SDI) proposal development for Space Based Laser System [illegible]). Responsible for the development of the Logistics Plan, inclusive ground based and space based systems. Instrumental in the formulation of SBL system "Primer" to facilitate rapid acquisition of comprehensive overview of conceptual design for contractor and Defense Establishment personnel.

– Lead Engineer, NATO, USAF, Dornier Aircraft (Germany) Technology transfer program for the AWACS advanced digitally processed, multimode Radar system. Responsible for development and implementation of advanced multimedia training materials. Instrumental in the establishment of engineering methods to conduct Installation and Checkout, and Maintenance training based on Fault Insertions methods. Exceptional performance commendation received from Dornier AC GMB.

– Senior Test Engineer: Project Engineering of the AWACS Avionics Integration Lab. Instrumental in development Of Line Replaceable Unit (LRU) Repair Facility to alleviate critical spares shortage.

– Test Engineer: AN/APY2 and TPS-43 Subassembly test and Integration. Instrumental in development of simplified circuit analysis descriptions, procedures and redesign of subassembly test fixtures to expedite test thru-put.

– Engineer in Charge: AN/ALQ 101-V3 Electronic Countermeasures system field modification project. Team leader for international warranty mod program involving twelve specialists deploying to three USAF CONUS sites, Britain, Germany and Iran.

– Field Service engineer: Fave Spike [illegible] Optical (hi power laser/lo light IV) Smart Ordinance Designator system, preproduction Test and Evaluation. Instrumental in maintaining, evaluation and modification of pre-production systems with limited facilities and support, to accomplish USAF directive of battle testing the system in South East Asia.

– Translator/VIP Escort, USAF, Europe: Translator for Senior Officers and Junior Officers Corps (JOC) at NATO briefings and functions.

– Varied positions: Biomedical Equipment Maintenance: Consumer products servicing: Recording Studio audio systems technician; USAF Project Transition technical instructor; USAF Jet Engine Mechanic.

SPECIAL SKILLS / ACCOMPLISHMENTS

– Developed Conceptual Design of Electronic Sensors Management (ESM) system, which has progressed into a multi million dollar program.

– Biographical Listing, 18th Edition et al., Marquis Who's Who

– Linguistics:
Certified: Italian, French, Dutch
Fluent: Flemisch, German
Conversational: Spanish

PERSONAL DATA

Birth Date:	May 13, 1944
Birth Place:	Anzegem, W.VI, Belgium
Citizenship:	USA naturalized
Security Clearance:	TS

APPENDIX U

Robert B. Miller, PhD
Licensed Clinical Psychologist

June 25, 1994

Karen Knebel
Claims Adjustor
Crawford and Company
1407 116th Avenue N.E. Suite 210
P.O. Box 91222
Bellevue, Washington 98009-9222

Dear Ms. Knebel:

I am writing to you on behalf of myself and Harvey A. Ries, M.D., regarding your reports dated March 17 and March 21, 1994, from Objective Medical Assessments Corporation. I deeply regret the delay in my responding to you on behalf of Dr. Ries and myself. As I read the letter now, I see that you included on the letter a 14 day turnaround comment which I had not noticed before. I have been in the brief discussion with Dr. Ries regarding Mr. Luc Martini's case, and have reviewed your report. Dr. Ries and I do not agree entirely with the conclusions or the comments in this report.

Dr. Ries and myself have a number on [sic] concerns related to inferences made in the report regarding Mr. Martini's depression in relationship of [sic] depression and obesity to apnea. We also have some concerns that the issue of stress related factors to physical illness, perception of pain, and behavior is likewise not sufficiently addressed.

I am concerned that Mr. Martini be accurately be [sic] perceived as a man who is depressed secondary to the loss of his job which appears, to my mind, most directly

related to his problems with apnea. The stress associated with these problems not only interacted with the problems, but exacerbated them directly and indirectly through stimulating weight gain. Mr. Martini's apparently declining physical state is the appropriate arena for physicians to debate. However, the interaction of emotions and stress as they relate to physical state, seems an appropriate arena for psychologists to comment on.

I am concerned that Mr. Martini is being misperceived as a misanthrope who seeks to blame and make excuses for his unhappy state. I do not believe that this is the case. Mr. Martini seeks an acknowledgement of what he feels to be are injustices brought upon him, this by his employer, despite his loyalty and devotion above and beyond the call of duty to that employer. What Mr. Martini appears to be seeking is an opportunity to regain self-respect and measure of self-esteem through gainful and appropriate employment by the company which as his employer played a key role in the stress illness cycle that leaves him now in his present condition. Mr. Martini does not seek vengeance, nor retribution, nor a "free lunch." He seeks what every gainfully employed citizen of this country seeks, and that is a fair deal from a fair employer. He perceives that the repeated medical examinations are designed to forestall and obstruct his achieving justice.

Based upon what I know of the history in this case, and upon Mr. Martini's statements, and based upon the medical examiners [sic] reports, it is difficult for me to refute Mr. Martini's opinion. It is particularly difficult when there are apparent contradictions in the examiner's reports related to Mr. Martini's apnea and his weight problem. It is likewise difficult to understand why certain

diagnostic procedures relating to soft tissue damage have not been undertaken, since it is soft tissue damage in his shoulder that Mr. Martini seeks some resolution of and for.

As a non-medical professional, I do not assume, nor do I pretend to have expertise in all of the medical issues contained in these reports Rather, my appeal is based upon what knowledge I have of the stress-related illnesses, and what I call, common sense, And it is on this basis that I have disagreements with your reports.

Sincerely yours,

/s/ Robert B. Miller
Robert B. Miller, M.D.

RBM:ac